IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

APPEAL NO. 490 OF 2006
IN
WRIT PETITION NO.322 OF 2002

The Association of Hospitals and another .. Appellants
v/s.
Municipal Corporation of Greater Bombay
and others .. Respondents

Mr.Rafiq Dada, senior counsel with Ms.Geetanjali Prabhu i/by M/s.Vigil Juris for the Appellants.

Mr.K.K.Singhvi, senior counsel with Mr.Birendra Saraf and Mr.Vinod Mahadik for the respondent Nos.1 to 4.

Mr.P.G.Sawant, Assistant Government Pleader for the respondent No.5.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 21ST AUGUST, 2006.

ORAL ORDER (Per R.M.Lodha, J.)

We heard Mr.Rafiq Dada, the senior counsel for the appellants and Mr.K.K.Singhvi, the senior counsel for the respondent Nos.1 to 4.

2. On 13th July, 2006, the Bench had observed that appeal shall be heard finally at the admission stage. We heard the appeal accordingly.

3. The only point that requires consideration by us is as to whether the learned Single Judge was justified in dismissing the

writ petition on the preliminary ground that writ petition at the instance of Association was not maintainable.

4. On 18th March, 1995, the Assistant Assessor and Collector, `A' Ward informed the Trustees of the Bombay Hospital Trust that the activities of their hospital cannot be treated as Charitable under the provisions of section 143(1)(a) of the Bombay Municipal Corporation Act as high fees are charged by their hospital for the patients under different heads such as bed charges, room charges, service charges and for medical treatment. It was noted in the communication since the services rendered by the hospital are charged to the patient and it cannot be said that the hospital is run exclusively for charitable purpose.

5. Similarly, by communication dated 30th March, 2000, the Lilawati Hospital and Research Centre was informed that their hospital cannot be treated as charitable under the provisions of section 143(1)(a) of the Bombay Municipal Corporation Act.

6. Similar communications are said to have ben sent to other such hospitals. The authorities of Municipal Corporation of Greater Mumbai, thus, ordered withdrawal of exemption from levy of General Tax, Education Cess, Street Tax granted under section 143(1)(a), 195-E(1)(b), 195-G(1)(b) of the Act and from the State Education Cess under section 7(e) of the Maharashtra Education and Employment Guarantee Cess Act to various public charitable hospitals in the city of Mumbai.

7. The present appellant viz. The Association of Hospitals was founded in August, 1985 in coordinating activities and for the

mutual interests of charitable trust hospitals. They took up the matter of withdrawal of exemption with the Municipal Commissioner of Greater Mumbai by making representation on 15th June, 1995. The Association represented that their member hospitals are governed by the provisions of Bombay Public Trusts Act, 1950 and they adhere to the provisions of the said Act. Over the years, these hospitals are known for their quality health care and they collectively provide about 3500-4000 free beds in the city of Mumbai and double these numbers of patients are given the subsidised medical care. The representation highlighted that these charitable hospitals are run on no profit motive basis and if there is any surplus amount at the end of the year, it is always ploughed back to the funds of the trust hospital. They requested the Municipal Commissioner of Greater Mumbai to restore the exemption from levy of General Tax, Education Cess etc. retrospectively with effect from 1.4.1994 granted to the Member Charitable Trust Hospitals. Subsequently also, such representation was made by the Association to the Municipal Commissioner on 24th April, 2000.

8. It appears that no effective decision was taken by the Municipal Commissioner on the representation made by the Association of Hospitals and they assumed that the representation made by them may have been rejected and, accordingly, filed writ petition before this court being Writ Petition No.2285 of 2000.

9. The said writ petition came up before the learned Single Judge. Vide order dated 7th December, 2000, the court directed the Municipal Commissioner to decide the representation made by the appellant-Association within a period of eight weeks from the

date of the decision.

10. The Municipal Commissioner, accordingly, considered the representation made by the appellant-Association and by his order dated 6th October, 2001, rejected the Association's claim for grant of exemption.

11. The operative order dated 6th October, 2001 reads thus-

> "The Association's claim for grant of exemption under section 143(1)(a), 195(1)(b), 195G(1)(b) of the said Act and exemption from levy of State Education cess is hereby rejected."

12. The order dated 6th October, 2001 passed by the Municipal Commissioner was challenged by the appellant-Association by filing writ petition No.322 of 2002 which, as noticed above, was dismissed on 13th April, 2006 on the preliminary ground of non-maintainability.

13. The order dated 13th April, 2006 cannot be sustained. The learned Single Judge was not right in holding that the writ petition filed by the Association was not maintainable. By the order dated 6th October, 2001, the Municipal Commissioner rejected the representation of the Association for grant of exemption under section 143(1)(a), 195(1)(b) and 195G(1)(b) of the Mumbai Municipal Corporation Act to its Member Charitable Hospitals. Obviously, upon rejection of the said representation, the Association was aggrieved person in challenging the said order. It is true that initially the separate orders of discontinuation of exemption came to be passed by the authority of Municipal Corporation of Greater Mumbai in respect of the individual

hospitals who are members of the appellant-Association but since the subject matter related to identical issue, the Association took up the matter on behalf of its member-hospitals and for espousing their cause, made first representation on 15th June, 1995 and later on 24.4.2000 on behalf of its member-hospitals. We find it difficult to appreciate how in this fact situation, the learned Single Judge could have held that the writ petition filed by the Association in challenging the order dated 6th October, 2001 passed by the Municipal Commissioner rejecting Association's representation was not maintainable. The learned Judge committed manifest error in holding so. The Association is surely an aggrieved person in challenging the order dated 6th October, 2001 which came to be passed by the Municipal Commissioner on its representation.

14. We, thus, hold that the order dated 13th April, 2006 dismissing the writ petition as not maintainable is liable to be set aside and is set aside accordingly. Writ petition is restored to the file of the Single Judge for consideration on merits in accordance with law.

Rule is made absolute. No order as to costs.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)